

STATE OF CALIFORNIA
DEPARTMENT OF CORPORATIONS
GENERAL INFORMATION

ESCROW LAW

APPLICATION FOR ESCROW AGENTS, JOINT CONTROL AGENTS, AND/OR INTERNET
ESCROW AGENTS LICENSE

Persons licensed by the Department of Corporations ("Department") as an escrow agent, joint control agent or Internet escrow agent are subject to the provision of the Escrow Law (Division 6 of the California Financial Code) and the Escrow Regulations (Title 10, Chapter 3, Subchapter 9 of the California Code of Regulations).

Copies of the California Financial Code may be purchased from the following vendors:

Bancroft-Whitney Publishing Company
West Publishing Company (800) 762-5272
Matthew Bender

The Regulations may be purchased from Barclays Law Publishers, P. O. Box 95767, Chicago, IL, 60694-5767 Phone # (800) 888-3600.

Securities of Applicant Must Be Placed In Escrow

Section 17213 of the Financial Code ("FC") requires the Commissioner of Corporations' consent for the transfer or issuance of stock of a licensed escrow company. The Department requires that all of the securities issued by the applicant corporation be placed in escrow PRIOR to the issuance of the escrow agent's license.

The securities of the escrow applicant must also be qualified for issuance pursuant to the Corporate Securities Law of 1968 or be exempt therefrom. You must file appropriate documentation to demonstrate compliance with these laws.

Escrow Law and Regulations

The Escrow Law provides that any person who engages in business as an escrow agent within this State must be a corporation duly organized for that purpose. Therefore, the Articles of Incorporation must include a clause which states that the primary purpose of the corporation is to engage in business as an escrow agent (FC Section 17200).

The tangible net worth and liquid asset requirements must be met in accordance with FC Section 17210. The applicant must demonstrate that it has liquid assets in excess of current liabilities of at least \$25,000 and a tangible net worth of at least \$50,000. You must file audited financial statements which show compliance with these requirements. Please note instructions under "Time Certificate of Deposit."



The surety bond requirements of FC Section 17202 must be met. The minimum surety bond required of an escrow agent is \$25,000. Applicants wishing to file a cash bond (FC Section 17202.1) should request an approved form from the Department.

Experience Requirements

Within the organization of each escrow agent, there must be an individual who possesses a minimum of five (5) years of responsible escrow experience. Responsible escrow experience has been interpreted to mean:

- (1) Experience as an escrow officer on a full-time basis with an organization which is regularly engaged in processing escrows, or
- (2) Experience as a qualified escrow supervisor of other escrow officers on a full-time basis where there is close supervision of escrow processed by the organization, or
- (3) A combination of escrow officer or escrow supervisory experience.

Experience as an escrow secretary, escrow assistant, escrow trainee, loan processor, or similar position is not considered as qualifying experience. A credit of one year toward the five years' experience is allowed if an applicant furnishes evidence of completion of Escrow I, II and III courses with a grade of "C" or higher from one of the colleges offering such courses.

Within the organization of each Internet escrow agent corporation engaged in the business of an escrow involving personal property, at least one qualified person that possesses knowledge of accounting and the Escrow Law and regulations shall be on duty at each business location of an Internet escrow agent licensed by this division when operations are being conducted. An Internet escrow agent shall notify the commissioner of the daily business hours during which those operations are to be conducted.

Escrow Agents' Fidelity Corporation

The Escrow Agents Fidelity Corporation (EAFC) is a Nonprofit Mutual Benefit Corporation organized for the purpose of indemnifying the members against losses sustained as a result of fraud, theft or embezzlement.

An applicant is required to be a member of EAFC prior to the issuance of an escrow agent's license if the applicant will be engaged in the business of processing only certain types of escrow transactions as specified in subdivision (c) of FC Section 17312 as follows:

* Real property escrows, including, but not limited to, the sale, lease, exchange, or transfer of title, and loans or other obligations to be secured by a lien upon real property.

* Bulk sale escrows, including, but not limited to, the sale of title to a business entity and the transfer of liquor licenses or other types of business licenses or permits.

* Fund or joint control escrows, including, but not limited to, transactions specified in FC Section 17005.1, and contracts specified in Section 10263 of the Public Contract Code.

* The sale, transfer of title, or refinance escrows for manufactured homes or mobile homes.

* Reservation deposits required under Article 2 (commencing with Section 11010) of Chapter 1 of Part 2 of Division 4 of the Business and Professions Code or by regulation of the Department of Real Estate to be held in an escrow account.

* Escrows for sale, transfer, modification, assignment, or hypothecation of promissory notes secured by deeds of trust.

Concurrent with the filing of an application for an escrow agent's license, those applicants that are required to be a member of EAFC need to submit an application for membership to Escrow Agents' Fidelity Corporation at 21731 Ventura Boulevard, Suite 110, Woodland Hills, CA 91364, Phone #(818)593-7080.

Fidelity Bond Requirement

Indemnity coverage (a fidelity bond) is required to be filed with this Department before the issuance of an escrow agent's license for those applicants who will be engaged in the business of receiving escrows for deposit or delivery of the types of transactions not specified in subdivision (c) Section FC 17312. The applicant is required to file a minimum fidelity bond in the amount of \$125,000 providing fidelity coverage on each officer, director, trustee, and employee for the purpose of indemnifying the escrow agent, or the escrow agent's successor in interest, for loss of trust obligations held by the escrow agent as a result of the fraudulent or dishonest abstraction, misappropriation, or embezzlement of trust obligations by an officer, director, trustee, or employee of the escrow agent. The fidelity bond may be either a primary commercial blanket bond or a blanket position bond, but shall be written by an insurer who has been licensed by the Department of Insurance of the State of California. In addition, the fidelity bond is required to contain a rider as set forth in subsection (b) of Section 1723 of the California Code of Regulations ("CCR").

If the fidelity bond contains a deductible, the escrow agent is required to file with the Department a surety bond (Form EL 303 A) in the amount of the deductible. The amount of surety bond needs to be maintained in the same amount as the deductible at all times.

The applicant has the option of designating "licensed place of business" as cross streets of a proposed location. The applicant will be requested to designate a street business prior to issuance of a license.

The applicant may notify the Department of a designated street address or may wait until requested to do so by the Department. This accommodation is made because often an applicant rents or leases space prior to licensure and is obligated to pay rent during the processing of the license application. By designating "cross streets" the applicant may be saved the cost of rent while the application is being processed.

Time Certificate or Certificate of Deposit

In order for a Time Certificate or Certificate of Deposit to be included in your liquid assets, you must submit a letter with your audited financial statements addressed to the Department of Corporations on the letterhead of the issuing bank stating the following:

"This letter is to certify that time certificate of deposit (Number) dated (Date), in the name of (Name of Escrow Company) and in the amount of \$ _____ is not encumbered, pledged or in any manner being held by the bank to secure any obligation due this bank by the company or any of its officers, directors, stockholders, employees or others, and may be withdrawn at any time by the corporation or the Commissioner of Corporations or his duly appointed conservator or receiver.

It is further stated that no 'right of offset' is claimed by this bank against any accounts of the company for any obligations due this bank from any of the officers, directors, stockholders, or employees of the company.

The statements made above are true and correct as of (balance sheet date) and (date letter prepared by bank)."

General Information

All individuals named in the application are required to file fingerprint cards which must be cleared through the California Department of Justice. The fingerprint card must be witnessed by a law enforcement official. Additional information sheets, fingerprint cards or request for live scan service may be obtained from the Department of Corporations upon request. (FC Section 17209(g), CCR Section 1726, and FC Section 17419)

The Department of Corporations is subject to the Permit Reform Act. The Act requires the Department to act upon COMPLETE applications within a specified time period. An application is considered complete when the clearance is received from the Department of Justice and all information and exhibits required by the application have been filed with the Department, including but not limited to the filing of evidence of membership in EAFC and compliance with the Corporate Securities Law for the issuance of securities. Accordingly, only applications with all required information and exhibits will be accepted for filing with the Department. Applications which do not include all required information and exhibits WILL BE RETURNED to the applicant.

The applicant will be notified within 45 days that an application has been accepted or of any deficiencies which need to be corrected prior to further processing of the application. A license will be issued or denied within 30 days of a completed application.